Supreme Court U.S.
FILED
FEB 7 2003
OFFICE OF THE CLERK

No. 02-754

*IN THE*
*SUPREME COURT OF THE UNITED STATES*

KATHERINE GRIFFIS,

*Petitioner,*

v.

MARIANNE LUBAN,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

**RESPONSE TO PETITION FOR WRIT OF CERTIORARI AND RESPONDENT'S APPENDIX**

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## QUESTION PRESENTED

Under the particular facts and circumstances reflected in the record below, did the Minnesota Supreme Court properly conclude that an Alabama circuit court did not have personal jurisdiction sufficient to enter a default judgment against a Minnesota resident based upon allegedly defamatory statements made in an internet discussion forum that did not target an Alabama audience?

## PARTIES TO THE PROCEEDING

This is a dispute between two individuals: Katherine Griffis, a resident of Alabama, and Marianne Luban, a resident of Minnesota.

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## RESPONSE TO PETITION FOR WRIT OF CERTIORARI

No compelling reason exists for this Court to review the July 10, 2002, decision of the Minnesota Supreme Court. That court reached the proper result on the issue of personal jurisdiction presented on this petition. The court below carefully analyzed the specific facts of this case in light of the precedents of this Court, including *Calder v. Jones*, 465 U.S. 783 (1984). The Minnesota decision is consistent with the decisions of other appellate courts, and has been cited with approval by the United States Court of Appeals for the Fourth Circuit and the California Supreme Court.

Accordingly, this Court should deny the petition for a writ of certiorari.

## OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at 646 N.W.2d 527 (Minn. 2002) (Pet.App.71), *reh'g denied* (Minn. Aug. 14, 2002) (Pet.App.101). That decision reversed the Minnesota Court of Appeals, 633 N.W.2d 548 (Minn. App. 2001) (Pet.App.61), which had affirmed an unreported decision of the Ramsey County District Court (Pet.App.51).

Griffis' Petition at 1 erroneously states that the Minnesota Court of Appeals upheld a decision of a Ramsey County District Court referee (Pet.App.44). In fact, that court earlier had vacated the referee's decision. *Griffis v. Luban*, 601 N.W.2d 712 (Minn. App. 1999). The vacation of the referee's order is reflected in the district court's docket listing for February 23, 2000. (Pet.App.59) Such vacated orders have no significance under Minnesota law. *See, e.g., In re Adoption of Pratt v. Lee*, 219 Minn. 414, 420, 18 N.W.2d 147, 151 (1945). The Petition nevertheless inexplicably relies upon the referee's decision (at p. 4), treats its findings as if they still had some effect (citing to it, without express identification, at p. 5), and quotes from it at length (at pp. 7-8).

## JURISDICTION

The Supreme Court of Minnesota denied Griffis' Petition for Rehearing on August 14, 2002. (Pet. App. 101) In seeking review in this Court, the petitioner has invoked original jurisdiction under 28 U.S.C. § 1251, as well as discretionary review under 28 U.S.C. § 1257.

This case presents constitutional questions following final judgment by the highest court of Minnesota. Thus, jurisdiction in this Court would be proper under 28 U.S.C. § 1257 by discretionary grant of a writ of certiorari. Griffis' invocation of original jurisdiction under 28 U.S.C. § 1251 is misplaced, however. This dispute is simply one between the residents of different states.

## FACTUAL AND PROCEDURAL BACKGROUND

The factual record in this case was imperfectly developed in a default proceeding in Alabama and in district court proceedings in Minnesota during which Marianne Luban represented herself after running out of funds to pay her first lawyer. The procedural history sprawls over two state court systems and federal bankruptcy court.

When this litigation began, petitioner Katherine Griffis was a resident of Alabama. She describes herself as "self-employed as a consultant on matters including international protocol, grant development activities and museum consulting." (Pet.App.3) She asserts that she holds a Juris Doctor degree from the Birmingham School of Law. (Pet.App.5) The Birmingham School of Law is not accredited. Griffis does not practice law. (Pet.App.5) From time to time, she taught brief, non-credit "Special Studies" classes at the University of Alabama at Birmingham. (Pet.App.4) She avows an interest in Egyptology, but nothing in the record establishes that she ever enrolled in or completed any formal degree program in that subject.

Respondent Marianne Luban lived in Minnesota. Due to medical disabilities, she has not been employed on a full-time basis since July 1995. She has a deep interest in matters relating to ancient Egypt. Luban's articles on Egyptology have been listed in the Annual Egyptological Bibliography, a resource published by the International Association of Egyptologists in cooperation with the Netherlands Institute for the Near East. That bibliography is available at http://www.leidenuniv.nl/nino/aeb.html (home page) (visited January 31, 2003). Luban's listed articles were published in 1998 and 1999.

Griffis and Luban posted messages to the "sci.archaeology" internet newsgroup concerning various points about the history or culture of ancient Egypt. (A27-28). Griffis objected to some of Luban's criticisms and sued Luban in Alabama circuit court in September 1997. (Pet.App.3) Griffis' complaint broadly alleged defamation, and sought compensatory and punitive damages and injunctive relief. (Pet.App.3-8). The complaint did not set forth the specific language of the allegedly defamatory statements.

Despite Griffis' allegations of numerous defamatory messages, the record in this case, as the Minnesota Supreme Court noted, "does not include any statements made by Luban, whether on the *sci.archaeology* newsgroup or elsewhere, after March, 1997" (Pet.App.73) and prior to the September 1997 commencement of litigation. The record in this case contains only four specific statements by Luban about Griffis predating the filing of the Alabama complaint on September 23, 1997; Griffis herself re-posted some of those statements to the newsgroup message board along with her own comments on March 28, 1997. (Pet.App.31-41) (The format and nature of the copies of internet messages in the record often makes it difficult to be sure of the date or

author of the communication, or even to determine whether the content has been altered or taken out of context.)

*First*, a message dated April 25, 1996, stating: "Dear Kat - Your being from the great state of Alabama speaks volumes (even though you do not express yourself very eloquently) about who you are and what you are!" (Pet.App.24) Griffis herself had asserted that Luban had written "A WHOLE LOT OF CRAP FROM WHAT I SEE."

*Second*, a posting dated December 17, 1996 (beginning at Pet.App.32) which included comments that "You are not in a position to know. You are not an Egyptologist." (Pet.App.33), "I can't imagine which 'Egyptologists' you were talking to. Perhaps they had the same credentials as yourself." (Pet.App.34), "Again, how would you know the 'real' issues that concern Egyptologists? The airs you give yourself are really quite ludicrous, Katherine." (Pet.App.37), and - in commenting upon Griffis' identifying herself with the line "University of Alabama at Birmingham>Special Studies" - the question, "What are 'Special Studies' and what have you to do with them?" (Pet.App.37), to which Griffis responded: "Now, for the record, I am an instructor with the University of Alabama at Birmingham, Department of Special Studies, and have been for over 17 years" (Pet.App.38).

*Third*, a posting on December 18, 1996, that:

> People work hard and make many sacrifices to earn their PhDs. Why a person like Katherine Griffis feels she has the right to circumvent all this and simply pluck a degree out of Cracker Jack box in order to lend herself some sort of cachet in a science-oriented newsgroup, is incomprehensible to me.

(Pet.App.25). It appears that Griffis does not have a graduate degree in Egyptology. (Pet.App.4) (complaint

alleges only that she "has had an ongoing interest in archaeology generally and Egyptology in particular for many years, and has studied the topic at the collegiate level").

*Fourth*, a posting on December 18, 1996 (incorporated within another posting dated December 21, 1996), that people

> could get their [PhD] degrees [in Egyptology] from a box of Cracker Jacks like Griffis did and still have themselves listed, as she has done, with all the greats of the science. You, yourself, have already admitted Griffis is no Egyptologist. ... [Clipping a listing that includes the entry "Griffis (Greenberg), Katherine; Univ. Alabama grifcon@usa.pipeline.com"] ...There she is, right up there with some of the foremost Egyptologist in the world, supposedly at the University of Alabama (except her e-mail address, as you know, has nothing to do with any university).

(Pet.App.27-28).

The four statements at issue focused upon Griffis' credentials and credibility within the community of persons with an interest in Egyptology, not upon Griffis' activities centered in Alabama. They did not impugn her law degree or her consulting business. The identification of Griffis' connection to Alabama went no further than what Griffis herself already had disclosed to the same internet newsgroup community. The statements are critical, but not self-evidently false or defamatory.

Luban received the complaint in the mail. (Pet.App.17) The complaint contained no allegations of personal jurisdiction over Luban. (Pet.App.3-8) The Alabama court's injunction and default judgment contain no jurisdictional findings or conclusions. (Pet.App.9-13) There is no evidence

that Luban ever conducted any business in Alabama, was present in Alabama, originated the publication or distribution of any statements about Griffis in Alabama, entered into any contracts or agreements with Griffis or any other Alabama resident, or used any Alabama publications, organizations, or residents in publishing or disseminating the allegedly defamatory statements that are the subject of Griffis' claims.

Believing that the complaint was "ludicrous and an attempt to harass me," and after consulting with a lawyer who told her that the complaint was without merit and that she was not subject to personal jurisdiction in Alabama, Luban did not answer the complaint and never appeared in the Alabama action. (Pet.App.17)

The Alabama court entered default judgment against Luban (Pet.App.12), awarded Griffis $25,000 (id.), and issued an injunction (Pet.App.9-11) as follows:

> 1. That [Luban] be, and hereby is, permanently enjoined from publishing in any form including, but not limited to, the Internet, World Wide Web, and E-mail, any statement asserting or implying:
>
> A. that Plaintiff is a liar;
>
> B. that Plaintiff is a phony;
>
> C. that Plaintiff is a con-artist or scam artist;
>
> E. [*sic* (apparent typographical error)] that Plaintiff has falsified her credentials in order to gain admission to any organization, or inclusion on any list, of Egyptologists;
>
> F. that Plaintiff is not affiliated with the University of Alabama at Birmingham or has not

taught courses in Egypt or Egyptology through that affiliation;

G. that Plaintiff does not possess a Juris Doctor degree;

H. that Plaintiff is not engaging in a legitimate consulting business.

On May 5, 1998, Griffis filed the Alabama judgment in Minnesota district court, under the Uniform Enforcement of Foreign Judgments Act, Minn. Stat. § 548.27. (Pet.App.55). On May 28, Luban moved to vacate the judgment, on the grounds that she was not subject to the personal jurisdiction of the Alabama court. (Pet.App.14-15, 55)

On August 31, 1998, a district court referee found that the Alabama default judgment was entered in violation of Luban's rights of due process. (Pet.App.44) Griffis moved for reconsideration, and the referee reversed his initial order and affirmed the Alabama judgment on February 10, 1999. (Pet.App.44) When Luban appealed, the Court of Appeals vacated the referee's orders because the court had erred by entering judgment upon the referee's order without a counter-signature by a district court judge. *See Griffis v. Luban*, 601 N.W.2d 712 (Minn. App. 1999).

After remand, facing increasing financial pressures as a result of this litigation, Luban petitioned for Chapter 7 bankruptcy. The monetary judgment against Luban was discharged in the bankruptcy court on March 15, 2000 without opposition from Griffis (Resp.App.26-27).

On March 21, 2000, Luban – now acting on her own behalf, without legal representation – renewed her jurisdictional challenge to the Alabama judgment. (Pet.App.49). Griffis in April 2000 countered by moving both to enforce the injunction and to show cause why Luban should not be held in contempt of the injunction.

(Resp.App.20). Griffis pointed to "25 Selected Posts in Violation of the Injunction," claiming to find 99 separate violations of the Alabama injunction. Among other things, Griffis contended that the injunctive command to not call her a "liar" had been violated by comments that the Alabama proceeding "was nothing more than a default judgment and that no libel or any of the other complaints of [Griffis] were proven in a court of law under challenge by an opposing counsel." Griffis asked the district court (1) to fine Luban not less than $99,000 for the alleged violations of the Alabama injunction, (2) to order the "surrender of Defendant's computer and modem," and (3) to incarcerate Luban if she did not fully comply with the relief sought. (Resp.App.23-24)

The district court heard argument on the cross-motions on May 15, 2000. It considered the issues without any reference to the referee's determinations. (Transcript of Oral Argument on May 15, 2000, at 7, 15) On December 13, 2000, it issued an order in which it affirmed the entry of the Alabama judgment, concluded that Luban was subject to personal jurisdiction in Alabama, and granted Griffis' motion for injunctive relief pursuant to the Alabama order. (Pet.App.51) As it later made clear (Transcript of Oral Argument dated March 21, 2001 at 2-3, 21), the district court did not independently assess the validity of the Alabama injunction in connection with its December 13, 2000 order. Instead, it simply incorporated the Alabama injunction.

Luban (through her current counsel of record, *pro bono publico*) appealed from both the December 13, 2000 order and the judgment entered on December 31, 2000. Appeal No. C3-01-0296, filed on February 15, 2001, challenged both personal jurisdiction of the Alabama court and the validity of the injunction as entered in both Alabama and Minnesota. (Pet.App.62)

On February 20, 2001, pursuant to Minn. R. Civ. P. 62.02, Luban moved to modify or suspend the injunction pending appeal. The district court heard argument on March 21, 2001. On April 25, 2001, the Court of Appeals rebuffed a Griffis challenge and held that the district court retained jurisdiction pending appeal to rule on Luban's motion to vacate the injunction. (Resp.App.1-2)

On June 13, 2001, the Ramsey County District Court issued an order vacating the prior injunctions against Luban. (Resp.App.3). It noted that, rather than "simply applying full faith and credit to the Alabama injunction," it now had taken "an independent look at the merits of the injunctive relief and the Constitutionality of such merits." (Resp.App.4-5). In the course of that independent look, the district court made the following Findings of Fact (Resp.App.5):

> 7. Plaintiff [Griffis] is using the [previously issued] injunction to prohibit any negative speech by Defendant [Luban] whether libelous or not, including but not limited to Defendant's legitimate criticisms of Plaintiff.
>
> 8. This injunction is a prior restraint on free speech.
>
> 9. Plaintiff has other remedies available should Defendant libel or slander Plaintiff.

Judgment was entered upon this order on July 9, 2001. Griffis appealed from that judgment on August 13, 2001. (Appeal No. CX-01-1350)

Meanwhile, Luban had moved in United States Bankruptcy Court to hold Griffis and her attorneys in contempt of Luban's March 15, 2000, bankruptcy discharge by reason of their April 17, 2000, motion to find her in contempt of the Alabama injunction. On May 9, 2001, that court granted Luban's motion for summary judgment

against Griffis and her attorneys C. Peter Erlinder and Ralph J. Overholt. (Resp.App.25) That court determined that the "plain intention" of Griffis' motion in Ramsey County District Court was "to both enforce the Alabama injunction and to either extract money damages from Luban for violations of the injunction or persuade the state court to incarcerate her for her purported contempt of the court." (Resp.App.33) The Bankruptcy Court found Griffis and her attorneys "in civil contempt of this Court for ... instituting contempt proceedings in Ramsey County District Court." (Resp.App.36) Following a trial on damages, the Court awarded fees and damages on July 18, 2001. (Resp.App.39) It also entered "a permanent injunction forever prohibiting the Defendants [Griffis, Erlinder, and Overholt] individually or in concert from seeking any redress or remedy whatsoever from the Plaintiff on the basis of prepetition conduct that did or would otherwise violate the Jefferson County Circuit Court of Alabama injunction entered against the Plaintiff in 1998." (Resp.App.40-41)

On September 11, 2001, the Court of Appeals in Appeal No. C3-01-0296 affirmed the district court judgment that the Alabama court had personal jurisdiction over Luban because she "should have realized that by making potentially defamatory statements that were being read in Alabama, she could be haled into court in Alabama to prove the truth of those statements." (Pet.App.61, 69). The Court of Appeals further held that the First Amendment challenge to the Alabama injunction "is not properly before us in the context of this appeal." (Pet.App.69-70). The Minnesota Supreme Court granted Luban's petition for further review. *Griffis v. Luban*, 2001 Minn. LEXIS 751 (Minn. Nov. 13, 2001).

The Court of Appeals heard oral argument in Appeal No. CX-01-1350 (Griffis' appeal from the judgment vacating the Alabama injunction) on December 11, 2001. On March 5, 2002, it issued an unpublished decision holding that the

broadest terms of the Alabama injunction (prohibiting Luban from ever calling Griffis a "liar") amounted to an unconstitutional prior restraint, but remanding to the district court for further consideration of whether some parts of the injunction should remain in effect. *Griffis v. Luban*, 2002 Minn. App. LEXIS 267 (Minn.App. March 5, 2002) (Resp.App.7).

The next day, on March 6, the Minnesota Supreme Court heard oral arguments in Appeal No. C3-01-296. On May 14, 2002, that court also granted Luban's petition for further review of the decision of the Minnesota Court of Appeals in Appeal No. CX-01-1350, staying further briefing and argument pending its decision in the first appeal. *Griffis v. Luban*, 2002 Minn. LEXIS 322 (Minn. May 14, 2002).

On July 11, 2002, the Minnesota Supreme Court unanimously reversed the Minnesota Court of Appeals in Appeal No. C3-01-296. *Griffis v. Luban*, 646 N.W.2d 527 (Minn. 2002) (Pet.App.71) It held that the "mere fact that Luban knew that Griffis resided and worked in Alabama is not sufficient to extend personal jurisdiction over Luban in Alabama, because that knowledge does not demonstrate targeting of Alabama as the focal point of the allegedly defamatory statements." (Pet.App.84) It vacated both the Alabama judgment and the Ramsey County district court judgment entered on December 21, 2000, based on the Alabama judgment. (*Id.*) Griffis' petition for rehearing was denied on August 13, 2002. *Griffis v. Luban*, 2002 Minn. LEXIS 606 (Minn. Aug. 13, 2002) (Pet.App.101).

On September 17, 2002, the Minnesota Supreme Court issued an order in Appeal No. CX-01-1350. Referring to its prior decision vacating the original judgments in Alabama and in the Ramsey County District Court, the court stated that "there is no legal basis on which the injunction that is the subject of this appeal and the court of appeals' remand

could be issued. Accordingly the decision of the court of appeals is vacated and the case remanded to the district court for final disposition of the case consistent with *Griffis I*." *Griffis v. Luban*, 2002 Minn. LEXIS 686 at *2 (Minn. Sept. 17, 2002) (Resp.App.43). Griffis has not sought further review of that order.

Griffis filed her petition for writ of certiorari in this Court on November 11, 2002, with respect to Appeal No. C3-01-296. Luban submits this response at the request of the Court.

## REASONS FOR DENYING THE PETITION

### 1. The Minnesota Supreme Court correctly applied *Calder v. Jones* to the specific facts of this case.

In *Calder v. Jones*, this Court held that jurisdiction was proper in California over two Florida residents who wrote and edited an allegedly defamatory article about a California movie star. The article was published in the *National Enquirer*. The result in that case rested on defendants' own knowledge - knowledge that "California [was] the focal point of both the story and of the harm suffered." 465 U.S. at 789. With that knowledge, this Court found, the defendants targeted and "expressly aim[ed]" their actions at California. 465 U.S. at 789. That knowledge came, in part, from the fact that the *National Enquirer* had a circulation in California that was almost twice the level of the next highest state. 465 U.S. at 785. The fact that the plaintiff was a movie star in a state filled with movie stars and known as the movie star capital of the world made such knowledge by the defendants an obvious and reasonable conclusion *for that case*.

The "'effects' test is but one facet of the ordinary minimum contacts analysis, to be considered as part of the full range of the defendant's contacts with the forum." *Revell v. Lidov*, __ F.3d __, 2002 WL 31890992 at *4 (5th Cir. Dec. 31, 2002); *see also Burger King Corp. [v. Rudzewicz*, 471 U.S. 462,

478 (1985) ("The Court long ago rejected the notion that personal jurisdiction might turn on 'mechanical' tests"). Griffis, however, reduces *Calder* to the simplistic proposition that a plaintiff can always sue a defendant in the plaintiff's home state if the defendant intentionally created a communication that the defendant knew or should have known would be likely to harm the plaintiff "where the plaintiff lives and works." *See* Griffis Petition at 3.

That is an assertion of breathtaking scope. For Griffis, apparently, litigation based upon allegedly defamatory statements could always be brought in the plaintiff's home location so long as the defendant knew where the plaintiff lived and worked. Thus, it would seem to follow that Griffis would argue that she constitutionally could have sued Luban in Alabama if Luban had made these same statements about Griffis at a gathering of amateur Egyptologists at the University of Minnesota, or to one friend over breakfast at a coffee shop in St. Paul. To suggest that *Calder* permits, much less mandates, such a result is absurd. Griffis' misinterpretation of the law would encourage vindictive plaintiffs to commence frivolous defamation actions in their home states (or countries) against their critics who live in inconveniently distant locations. Traditional notions of due process protect non-residents from such oppressive tactics by requiring minimum contacts between the defendant and the forum state.

In vacating the Alabama judgment for lack of personal jurisdiction, the Minnesota Supreme Court carefully considered the decisions of this Court, including *Calder*. Its discussion of *Calder* in the context of the circumstances of this case is best appreciated in full (*see* Pet.App.77-84), but the following passages convey its consistency with *Calder*:

> Although the Supreme Court has engaged in little further discussion of *Calder*, in one post-*Calder*

> decision the Court did make it clear that foreseeability of effects in the forum is not itself enough to justify long-arm jurisdiction. ... *Burger King Corp. [v. Rudzewicz*, 471 U.S. 462, 474 (1985)]. ... If foreseeability of injury in the forum is not enough, it follows that something more than defendant's knowledge that the plaintiff is a resident of the forum and will feel the effects of the tortious conduct there must be necessary to satisfy the effects test. [Pet.App.80]
>
> * * *
>
> The critical question in this case turns on ... whether the defendant expressly aimed the allegedly tortious conduct at the forum such that the forum was the focal point of the tortious activity. [Pet.App.81]
>
> * * *
>
> In sum, we conclude that the record does not demonstrate that Luban expressly aimed her allegedly tortious conduct at the Alabama forum ... . The mere fact that Luban knew that Griffis resided and worked in Alabama is not sufficient to extend personal jurisdiction over Luban in Alabama, because that knowledge does not demonstrate targeting of Alabama as the focal point of the allegedly defamatory statements. [Pet.App.84]

The Minnesota Supreme Court applied the same analysis of *Calder* as the Third Circuit had applied in *Imo Indus., Inc. v. Kierkert AG*, 155 F.3d 254, 259 (3d Cir. 1998). In her petition for rehearing, Griffis argued that *Imo* did not "involve a claim that the defendant was an author who defamed the plaintiff." (Pet.App.91 n.4) However, the Third Circuit explicitly applied the *Imo* analysis to defamation claims in

*Remick v. Manfredy*, 238 F.3d 248, 258-59 (3d Cir. 2001), reaching conclusions consistent with those of the Minnesota Supreme Court in this case. *See also English Sports Betting, Inc. v. Tostigan*, 2002 WL 461592 at *3 (E.D. Pa. March 15, 2002) ("There is a difference between tortious conduct targeted at a forum resident and tortious conduct expressly aimed at the forum. Were the former sufficient, a Pennsylvania resident could hale into court in Pennsylvania anyone who injured him by an intentional tortious act committed anywhere.").

The Minnesota Supreme Court's approach in *Luban*, like the Third Circuit's approach in *Imo* and *Remick*, is consistent with many prior cases around the country applying *Calder v. Jones* to various factual situations. *See, e.g., Young v. New Haven Advocate*, 315 F.3d 256, 262-64 (4th Cir. 2002) (facts did not support jurisdiction in libel case); *Revell v. Lidov*, __ F.3d __, 2002 WL 31890992 at *4-6 (5th Cir. Dec. 31, 2002) (facts did not support jurisdiction in libel case); *Reynolds v. Manfredy*, 23 F.3d 1110, 1119-20 (6th Cir.) (facts did not support jurisdiction in libel case), *reh'g denied, cert. denied*, 513 U.S. 962 (1994); *Wallace v. Herron*, 778 F.2d 391, 394-95 (7th Cir. 1985) (facts did not support jurisdiction in action for malicious prosecution), *cert. denied*, 475 U.S. 1122 (1986); *Hicklin Engineering, Inc. v. Aidco, Inc.*, 959 F.2d 738, 739 (8th Cir. 1992) (facts did not support jurisdiction in libel case); *Oasis v. Judd*, 132 F.Supp.2d 612, 623-24 (S.D. Ohio 2001) (facts did not support jurisdiction in libel case); *Lofton v. Turbine Design, Inc.*, 100 F.Supp.2d 404, 411 (N.D. Miss. 2000) (facts did not support jurisdiction in libel case); *Bailey v. Turbine Design, Inc.*, 86 F.Supp.2d 790, 796-97 (W.D. Tenn. 2000) (facts did not support jurisdiction in libel case); *Barrett v. Catacombs Press*, 44 F.Supp.2d 717, 729-31 (E.D. Pa. 1999) (facts did not support jurisdiction in libel case); *Bils v. Bils*, 22 P.3d 38, 39-41 (Ariz. 2001) (facts did not support jurisdiction in case for intentional infliction of emotional distress); *cf. Blumenthal v.*

*Drudge*, 992 F.Supp. 44, 57 (D.D.C. 1998) (facts supported personal jurisdiction in libel action in the District of Columbia because "the subject matter of the Drudge Report is directly related to the political world of the Nation's capital and is quintessentially 'inside the Beltway' gossip and rumor").

Both the Fourth Circuit and the California Supreme Court have endorsed the decision of the Minnesota Supreme Court by citing it in support of their own applications of this Court's precedents on personal jurisdiction.

In *Young v. New Haven Advocate*, 315 F.3d 256 (4th Cir. 2002), the Fourth Circuit cited the Minnesota Supreme Court's decision in *Luban* as support for its own conclusion that Virginia lacked personal jurisdiction over allegedly defamatory statements about a Virginia prison warden published in Connecticut newspapers and posted on the papers' websites. *Id.* at 264.

In *Pavlovich v. Superior Court of Santa Clara County*, 58 P.3d 2 (Cal. 2002), the California Supreme Court cited the *Luban* decision, and others, to support its statements that "most courts agree that merely asserting that a defendant knew or should have known that his intentional acts would cause harm in the forum state is not enough to establish jurisdiction under the [*Calder*]effects test," *id.* at 8, and that "virtually every jurisdiction has held that the *Calder* effects test requires intentional conduct *expressly aimed at or targeting* the forum state in addition to the defendant's knowledge that his intentional conduct would cause harm in the forum state," *id.* at 8 & n.1.

In short, contrary to the assertions in Griffis' Petition at 3, the Minnesota Supreme Court neither "rejected" *Calder* nor "created a new standard for determining the existence of personal jurisdiction over Internet authors." Like many

other courts, it simply and conscientiously applied this Court's precedents.

**2. Even if this Court were to reverse the decision of the Minnesota Supreme Court, Griffis would not obtain any meaningful benefit in this case.**

Granting this petition for writ of certiorari will only prolong the financial and emotional burden for Luban. Griffis herself cannot obtain any meaningful benefit in this case, even if this Court eventually were to reverse the jurisdictional decision of the Minnesota Supreme Court.

The default judgment for $25,000 was discharged in bankruptcy on March 15, 2000. (Resp.App.26) The bankruptcy court has prohibited Griffis and her attorneys from ever again seeking any penalty from Luban based upon allegedly defamatory statements she may have made through the date of the discharge. (Resp.App.40-41)

Contrary to petitioner's assertions (Griffis Petition at 17-18), the Alabama judgment was never entitled to full faith and credit with respect to its injunctive relief. In both Minnesota and Alabama, any continuing injunction is subject to modification by the rendering court, in the exercise of inherent judicial power. *Jacobson v. County of Goodhue*, 539 N.W.2d 623, 625 (Minn. App. 1995), *rev. denied* (Minn. 1996); *Wilkinson v. State, ex rel. Morgan*, 396 So. 2d 86, 88 (Ala. 1981). Modification necessarily includes vacation of the entire injunction, upon such equitable grounds as Griffis "using the injunction to prohibit any negative speech by [Luban] whether libelous or not, including but not limited to [Luban's] legitimate criticisms of [Griffis]" and having "other remedies available should [Luban] libel or slander [Griffis]." (*See* Resp.App.5) If a foreign judgment is subject to modification by the rendering court, it need not be afforded full faith and credit. *Thompson v. Thompson*, 484 U.S. 174, 180 (1988); *Sistare v. Sistare*, 218 U.S. 1 (1910); *Matson v. Matson*,

310 N.W.2d 502, 505 (Minn. 1981); *Wood v. Wood*, 154 So. 2d 661, 663 (Ala. 1963). The broad Alabama injunction also raised substantial First Amendment issues, as the lower courts recognized. (Resp.App.5, 18)

Of course, if Luban were to make new allegedly false and defamatory statements about Griffis on the internet or elsewhere, those remarks could be the subject of a new defamation suit. Depending upon the circumstances of those remarks, Griffis might even convince the courts that the statements targeted the state of Alabama so as to support jurisdiction in that state. However, Griffis has not brought any such suit against Luban during the 20 months since the Ramsey County District Court vacated the injunction.

With so little for Griffis to hope to gain from any reversal of the decision of the Minnesota Supreme Court, one must wonder at the true motivation for this petition for a writ of certiorari. Whatever the explanation, there is no reason to use this case to address the broad issues of personal jurisdiction in the context of allegedly defamatory statements on the internet.

## CONCLUSION

For the foregoing reasons, Marianne Luban respectfully requests this Court to deny the petition for a writ of certiorari.

Respectfully submitted this 7th day of February, 2003.

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**STATE OF MINNESOTA**

**IN COURT OF APPEALS**

---

Katherine Griffis,

Respondent, ORDER

vs. C3-01-296

Marianne Luban,

Appellant.

---

Considered and decided by Toussaint, Chief Judge, Amundson, Judge, and Willis, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE FOLLOWING REASONS:

This appeal was filed February 15, 2001. Appellant seeks review of a December 13, 2000, order and resulting judgment entered on December 21 denying her motion to vacate a foreign judgment, granting respondent's motion for injunctive relief, and awarding attorney fees to respondent. On March 19, appellant's brief was filed.

On April 13, respondent filed a motion to dismiss the appeal because of the pendency of appellant's motion in district court to vacate the injunction pursuant to Minn. R. Civ. P. 62.02. Appellant opposes dismissal of the appeal.

An appeal may be taken from an order that grants, refuses, dissolves or refuses to dissolve, an injunction. Minn. R. Civ. App. P. 103.03(b). During the pendency of an appeal

under rule 103.03(b), the district court's authority to make an order necessarily affecting the order or judgment appealed from is not suspended. Minn. R. Civ. App. P. 108.01, subd. 1. During the appeal, the district court has discretion to suspend, modify, restore, or grant an injunction. Minn. R. Civ. P. 62.02.

The December 13 order granting respondent's motion for injunctive relief is immediately appealable. The district court retains jurisdiction to rule on appellant's motion to vacate the injunction despite the pendency of the appeal. Respondent has not shown a basis to dismiss the appeal.

IT IS HEREBY ORDERED:

1. Respondent's motion to dismiss the appeal is denied.

2. Pursuant to this court's April 18, 2001, order, respondent's brief is due on May 7, 2001.

3. The clerk of the appellate courts shall provide copies of this order to the Honorable Lawrence D. Cohen, counsel of record, and the trial court administrator.

Dated: April 24, 2001

**BY THE COURT**

[s] Edward Toussaint
Chief Judge

AW/dr

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

---

Katherine Griffis,

Plaintiff,

vs.

Marianne Luban,

Defendant.

Dist. Court File No. C1-98-4573

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER VACATING PLAINTIFF'S PERMANENT INJUNCTION**

---

This matter came on for hearing before the Honorable Lawrence D. Cohen, Chief Judge of Ramsey County District Court on March 21, 2001, upon Defendant's Motion to Vacate Plaintiff's Temporary Injunction.

Ralph J. Overholt appeared on behalf of Plaintiff.

John P. Borger appeared on behalf of Defendant.

The matter was brought before the Court upon Defendant's motion to vacate an injunction pending appeal issued by this Court on December 13, 2000 and the Judgment entered thereon on December 21, 2000.

Based on all the files, records and proceedings herein, and upon arguments of counsel, this Court makes the following:

## FINDINGS OF FACT

1. Plaintiff Katherine Griffis resides in Alabama. Defendant Marianne Luban resides in Minnesota.

2. Plaintiff sued Defendant in Alabama for defamation, alleging that Internet communications by Defendant damaged Plaintiff in Alabama.

3. Defendant did not answer and a default judgment was entered against her in Alabama on January 14, 1998. In addition to a money judgment, the circuit court ordered that Defendant be permanently enjoined from publishing in any form including, but not limited to the Internet, any statements asserting or implying:

A. that Plaintiff is a liar;

B. that Plaintiff is a phony;

C. that Plaintiff is a con-artist or scam-artist;

D. that Plaintiff has falsified her credentials in order to gain admission to any organization, or inclusion on any list, of Egyptologists;

E. that Plaintiff is not affiliated with the University of Alabama at Birmingham or has not taught courses in Egypt or Egyptology through that affiliation;

F. that Plaintiff does not possess a Juris Doctor degree;

G. that Plaintiff is not engaging in a legitimate consulting business.

4. On December 13, 2000, this Court denied Defendant's motion to vacate the Alabama judgment and granted Plaintiff's motion for injunctive relief.

5. On March 21, 2001, there was a hearing before this Court on the merits of the injunction. The purpose of that hearing was not simply applying full faith and credit to the Alabama

injunction, rather that the Court take an independent look at the merits of the injunctive relief and the Constitutionality of such merits.

6. Defendant subsequently declared Bankruptcy and discharged Plaintiffs monetary judgment at that proceeding.

7. Plaintiff is using the injunction to prohibit any negative speech by Defendant whether libelous or not, including but not limited to Defendant's legitimate criticisms of Plaintiff.

8. This injunction is a prior restraint on free speech.

9. Plaintiff has other remedies available should Defendant libel or slander Plaintiff.

## CONCLUSIONS OF LAW

1. The liberty of the press shall forever remain inviolate, and all persons may freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of such right. MN Const. art. 1, § 3.

2. During an appeal, the District Court has discretion to suspend, modify, restore, or grant an injunction. Minn. R. Civ. P. 62.02. Any continuing injunction is subject to modification by the rendering court, because "courts have the inherent power to amend, modify, or vacate an injunction where the circumstances have changed and it is just and equitable to do so". *Jacobson v. County of Goodhue*, 539 N.W.2d 623, 625 (Minn. App. 1995).

3. The Uniform Enforcement of Foreign Judgments Act gives this Court the same power to vacate, modify, or enforce orders or judgments from other states as it does its own orders and judgments. See Minn. Stat. § 548.27 (2000).

4. All speech restricting injunctions are prior restraints in the literal sense of 'administrative and judicial orders forbidding certain communications when issued in advance

of the time that such communications are to occur'. *Alexander v. United States*, 509 U.S. 544, 550 (1993).

**ORDER**

Based upon the Findings of Fact, Conclusions of Law, files, records and proceedings, and upon arguments of counsel, this Court HEREBY ORDERS:

1. The injunction entered against Defendant Marianne Luban and in favor of Plaintiff Katherine Griffs, as reflected in the January 14, 1998, order of the Alabama Circuit Court for Jefferson County, as incorporated in this Court's order dated December 13, 2000, and judgment entered thereon December 21, 2000, be **VACATED** in all respects.

LET THE JUDGEMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

/s/_____

Dated: June 13, 2001 The Honorable Lawrence D.Cohen

Chief Judge of District Court

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2000).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**CX-01-1350**

Katherine Griffis,
Appellant,

vs.

Marianne Luban,
Respondent.

**Filed March 5, 2002**
**Reversed and remanded**
**Halbrooks, Judge**

Ramsey County District Court
File No. C1984573

Peter Erlinder, 566 Marshall Avenue, St. Paul, MN 55102 (admitted pro hac vice); and

Ralph Overholt, PO Box 5331, Hopkins, MN 55343 (for appellant)

John P. Borger, C. David Flower, Faegre & Benson, 2200 Wells Fargo Center, 90 South 7th Street, Minneapolis, MN 55402 (for respondent)

Considered and decided by Stoneburner, Presiding Judge, Shumaker, Judge, and Halbrooks, Judge.

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

Appellant Katherine Griffis challenges the district court's order vacating the temporary injunction issued by an Alabama court that prohibited respondent Marianne Luban from making certain defamatory statements about Griffis. Griffis contends that the district court exceeded its authority under Minn. R. Civ. P. 62.02 and erred as a matter of law in vacating the injunction while an appeal was pending and there was no finding of changed circumstances. Griffis argues that the injunction does not violate the First Amendment because it was not overbroad on its face and because the prohibited statements have been found to be defamatory by a court of competent jurisdiction. Because the Constitution permits injunctions against defamatory speech, we reverse and remand to the district court for a determination of the proper scope of the injunction based on the findings made by the issuing court.

## FACTS

This appeal marks the third time that this matter has been before this court. Because the underlying facts were presented in *Griffis v. Luban*, 633 N.W.2d 548 (Minn. App. 2001), *review granted* (Minn. Nov. 13, 2001), they will not be repeated in full here.

Procedurally, Griffis, an Alabama resident, brought a defamation claim in Alabama state court against Luban, a Minnesota resident. Luban failed to answer the complaint or make an appearance and the court granted Griffis a $25,000 default judgment and injunctive relief. The injunction prohibited Luban from publishing in any form including, but not limited to, the Internet, World Wide Web, and E-mail, any statement asserting or implying:

A. that [Griffis] is a liar;

B. that [Griffis] is a phony;

C. that [Griffis] is a con-artist or scam-artist;

E.[sic] that [Griffis] has falsified her credentials in order to gain admission to any organization, or inclusion on any list, of Egyptologists;

F. that [Griffis] is not affiliated with the University of Alabama at Birmingham or has not taught courses in Egypt or Egyptology through that affiliation;

G. that [Griffis] does not possess a Juris Doctor degree;

H. that [Griffis] is not engaging in a legitimate consulting business.

Griffis filed the judgment in Ramsey County District Court pursuant to the Uniform Enforcement of Foreign Judgments Act and Luban moved to vacate the judgment on the ground that the Alabama court lacked personal jurisdiction over her. A referee initially granted Luban's motion, but found, upon reconsideration, that the Alabama court had personal jurisdiction over Luban.

On appeal, this court vacated the referee's decision because it had not been reviewed or signed by a district court judge. *Griffis v. Luban*, 601 N.W.2d 712, 713 (Minn. App. 1999). We did not reach the merits of the dispute.

Luban renewed her motion to vacate the Alabama judgment on the grounds of lack of personal jurisdiction and violation of the First Amendment. Griffis moved to enforce the injunction. Based on its conclusion that Alabama's long-arm statute gave it personal jurisdiction over Luban, the district court gave the judgment full faith and credit without deciding the First Amendment issue.

Luban appealed on the personal jurisdiction issue to this court and moved the district court pursuant to Minn. R. Civ.

P.62.02 to vacate the injunction as violative of the First Amendment. In response, Griffis brought a motion to dismiss Luban's appeal while the matter was still pending before the district court. We denied Griffis's motion to dismiss because we concluded that "[t]he district court retains jurisdiction to rule on [Luban's] motion to vacate the injunction despite the pendency of the appeal." *Griffis v. Luban*, No. C3-01-296 (Minn. App. Apr. 24, 2001) (order).

Following a hearing, the district court vacated the injunction on the ground that it violated the First Amendment protection against prior restraint of speech. Griffis appealed from the district court's order before this court had issued its decision on Luban's challenge to the district court's earlier conclusion that personal jurisdiction existed. We affirmed the district court on its ruling that Alabama had personal jurisdiction over Luban. *Griffis*, 633 N.W.2d at 553. Griffis now challenges the district court's order vacating the injunction.

## DECISION

### I.

Griffis contends that the district court exceeded its authority under Minn. R. Civ. P. 62.02 by vacating an injunction in response to a motion brought by Luban, who opposed the injunction, after Luban had filed a notice of appeal from the district court's order that personal jurisdiction existed. Griffis further argues that the district court abused its discretion by dissolving the injunction in the absence of changed legal or factual circumstances.

This court reviews interpretations of the rules of civil procedure de novo. *Jostens, Inc. v. Federated Mut. Ins. Co.*, 612 N.W.2d 878, 883 (Minn. 2000). Minn. R. Civ. P. 62.02 provides as follows:

> When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

The district court concluded that its authority to modify the injunction while an appeal was pending was derived from rule 62.02 and the court's "inherent power to amend, modify, or vacate an injunction where the circumstances have changed and it is just and equitable to do so." *Jacobson v. County of Goodhue*, 539 N.W.2d 623, 625 (Minn. App. 1995) (quoting *Channel 10, Inc. v. Indep. Sch. Dist. No. 709, St. Louis County*, 298 Minn. 306, 327-28, 215 N.W.2d 814, 829 (1974)).

In *Jacobson*, this court held that a district court retains jurisdiction to vacate an injunction under its inherent powers of equity and Minn. R. Civ. P. 60.02(e) when a sufficient change in circumstances has made the continued application of the injunction inequitable. *Id.* In that case, we affirmed the district court's order vacating an injunction that prohibited enforcement of a county ordinance banning nude dancing in bars on the ground that the Minnesota Supreme Court upheld the constitutionality of a similar ordinance seven years after the *Jacobson* injunction was issued. *Id.* at 626-27. The supreme court's ruling in a later case involving a challenge to the constitutionality of a similar ordinance constituted a sufficient change in legal circumstances to warrant vacating the injunction. *Id.* at 626. But *Jacobson* is not applicable to the facts and procedural posture of this case, which involves an order to vacate issued while an appeal was pending and in the absence of any findings of changed legal circumstances.

Luban argues that we expressly acknowledged the propriety of her rule 62.02 motion when we stated, "[t]he district court retains jurisdiction to rule on [Luban's] motion to vacate the injunction despite the pendency of the appeal." *Griffis v. Luban*, No. C3-01-296 (Minn. App. Apr. 24, 2001) (order). But the issue then before us was whether the appeal to this court and the motion in the district court could go forward simultaneously. Our order did not determine the motion's propriety.

By its terms, Minn. R. Civ. P. 62.02 does not allow a court to vacate an injunction, but only to "suspend, modify, restore, or grant an injunction." The rule's intent is to give courts a mechanism to a stay a judgment and thereby preserve the status quo pending appeal. *See* 2A David F. Herr & Roger S. Haydock, *Minnesota Practice* § 62.5 (1998) (stating that the rule seeks to secure the rights of the adverse party, or appellee). Here, rather than preserving the status quo, the district court made a ruling akin to a reversal on a motion for reconsideration. We conclude that rule 62.02 does not give the district court authority to vacate the injunction and the court erred in its decision to do so.

II.

Griffis argues that the district court also erred in finding that the injunction is a prior restraint on free speech being used by Griffis to prohibit any negative speech, including legitimate criticism, by Luban. Whether an injunction violates the Constitution is a legal issue, which this court reviews de novo. *See State v. Wicklund*, 589 N.W.2d 793, 797 (Minn. 1999) (trial court's conclusions regarding free speech protections in the Minnesota Constitution reviewed do novo).

Griffis contends that *Advanced Training Sys., Inc. v. Caswell Equip. Co.*, 352 N.W.2d 1 (Minn. 1984), permits an injunction when there has been a judicial determination that

the enjoined statements are defamatory. Luban counters that, starting with *Near v. Minnesota*, 283 U.S. 697, 51 S. Ct. 625 (1931), courts have generally prohibited these "prior restraints" of speech. Further, she asserts that the narrow exception in *Advanced Training* is inapplicable because this dispute did not arise in a commercial context, there was no full adversarial hearing, and the injunction is not tailored to precise statements.

*Near* and its progeny dealt with a number of injunctions that the U.S. Supreme Court held to be unconstitutional as "prior restraints" of speech. *Near*, 283 U.S. at 713-23, 51 S. Ct. at 630-33; *see Okla. Publ'g Co. v. Dist. Court*, 430 U.S. 308, 311-12, 97 S. Ct. 1045, 1047 (1977); *N.Y. Times Co. v. United States*, 403 U.S. 713, 719-20, 91 S. Ct. 2140, 2144 (1971); *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419-20, 91 S. Ct. 1575, 1578 (1971). But while "[t]hese cases may once have stood for the proposition that any injunction against speech activity was a 'prior restraint' on speech," the Court later stated that the "special vice of a prior restraint is that communication will be suppressed * * * before an adequate determination that it is unprotected by the First Amendment." *Advanced Training*, 352 N.W.2d at 11 (quoting *Pittsburgh Press Co. v. Comm'n on Human Relations*, 413 U.S. 376, 390, 93 S. Ct. 2553, 2561 (1973)).

In *Pittsburgh Press*, the Court upheld an order that prohibited a newspaper from listing help-wanted advertisements in gender-specific columns, e.g., "Male Help Wanted." 413 U.S. at 390, 93 S. Ct. at 2561. In doing so, the Court indicated there was an "adequate determination" when the order was (1) based on a continuing course of conduct so that the court did not have to speculate as to its effects, (2) not in effect until after the court determined the character of the speech, and (3) clear and narrowly drawn to enjoin no more speech than necessary. *Id.* Similarly, in *Advanced Training*, our supreme court found that an

injunction against a business's disparaging comments was constitutionally permissible because (1) the oft-repeated comments allowed the court to "gauge [their] actual impact," (2) the court held adversarial proceedings to determine the comments' character, and (3) the injunction was limited to the precise statements found to be libelous. *Advanced Training*, 352 N.W.2d at 11. Although *Advanced Training* arose in a commercial context, the court's analysis can be applied more broadly. Therefore, we hold that an injunction is not an unconstitutional "prior restraint" if it is (1) based on a sufficient record, (2) issued after a judicial determination that the speech is in an unprotected class, and (3) narrowly tailored to enjoin only the offending speech.

**A. Sufficient record.**

The first factor requires there to be a sufficient record of the speech at issue to permit a court to adequately gauge its nature and impact. In *Pittsburgh Press*, the record was sufficient to avoid speculation about the speech when it included newspaper clippings from one day's edition that enabled the court to conclude that there had been 248,000 similar help-wanted advertisements. 413 U.S. at 379, 93 S. Ct. at 2555-56. In *Advanced Training*, the defendant circulated at least five different "bulletins" and wrote letters over a number of years from which the court and jury had ample opportunity to assess the nature and impact of the speech. 352 N.W.2d at 11. Here, the Alabama court identified at least 100 communications that formed the basis of Griffis's complaint. In light of the governing cases, this is a sufficient record from which to gauge the nature and impact of the speech in issue.

**B. Judicial determination.**

The second factor requires that there be a judicial determination as to the quality of the allegedly unprotected speech. In describing this requirement, *Advanced Training*

used terms such as "full adversarial proceedings," "full and fair adversary proceeding, and "full jury trial." 352 N.W.2d at 11. Because these terms lack legal precision, we must look to the genesis of the "prior restraint" doctrine, and the cases that followed, to determine the character of this requirement.

In *Pittsburgh Press*, the U.S. Supreme Court quoted Blackstone when describing the common law underpinnings against prior "restraints:"

> To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the revolution, *** is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government.

*Pittsburgh Press*, 413 U.S. at 391, 93 S. Ct. at 2561 (quotation omitted). From this, it is apparent that the doctrine seeks to avoid the arbitrary and capricious exercise of censorship that would exist without "an adequate determination that [speech] is unprotected by the First Amendment." *Id.*

This concern is also evident in the Court's cases involving the licensing of motion pictures and other media. *See S.E. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 560-61, 95 S. Ct. 1239, 1247-48 (1975). In this realm, the Court has repeatedly stated that

> a system of prior restraint "avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system."

*Id.* at 560, 95 S. Ct. at 1247 (quoting *Freedman v. Maryland*, 380 U.S. 51, 58, 85 S. Ct. 734, 739 (1965)). To that end, the Court invalidates such "prior restraints" unless (1) the burden of instituting and proving the case lies with the censor, (2) any

restraint prior to judicial review serves only to maintain the status quo, and (3) the judicial determination is prompt. *Id.* Again, it is apparent that the constitutional concerns arise only when a restraint is imposed without a proper process. In light of this common concern, we conclude that a court makes "an adequate determination" when it employs due process before enjoining any speech.

The issue before us is whether there was due process in this instance. The U.S. Supreme Court stated:

> Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits. A State, can, for example, enter a default judgment against a defendant who, after adequate notice, fails to make a timely appearance * * *.

*Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S. Ct. 780, 786 (1971). Likewise, the Minnesota Supreme Court has held that a default judgment satisfies due process when the court has jurisdiction over both the offense and the defendant and the resulting trial is not merely a sham or pretense. *In re Children of Coats*, 633 N.W.2d 505, 512 (Minn. 2001).

Here, Luban was subject to personal jurisdiction in the Alabama court and she received proper notice. *Griffis v. Luban*, 633 N.W.2d 548, 552-53 (Minn. App. 2001), *review granted* (Minn. Nov. 13, 2001). There is nothing in the record to indicate that the proceeding was a mere sham or pretense. To the contrary, the record shows the Alabama court reviewed the evidence and made detailed findings from which it crafted its injunction. Therefore, we find that the court employed due process and thus made an "adequate determination" before issuing the injunction.

C. **Narrowly tailored.**

*Advanced Training* requires that any injunction against speech be "limited to the precise statements found libelous." 352 N.W.2d at 11. Griffis, herself, concedes that an injunction must be narrowly tailored so as to enjoin only unprotected speech. The Alabama court found that Luban made the following false statements:

A. She has called [Griffis] a liar;

B. She has alleged, directly and by implication, that [Griffis] secured membership in the International Association of Egyptologists and placement on other lists of Egyptologists or membership in other Egyptological organizations by misrepresenting her qualifications when applying to those organizations and lists;

C. She claimed that [Griffis] was not affiliated with the University of Alabama at Birmingham and that she had not taught courses in Egyptology in the Special Studies Department of the University of Alabama at Birmingham;

D. She claimed that [Griffis] lied when she identified herself as having a Juris Doctor degree;

E. She alleged that the consulting business [Griffis] conducts is not legitimate; and

F. She has referred to [Griffis] as a "con-artist," a "scam-artist" and a "phony."

Accordingly, the Alabama court enjoined Luban from saying or implying the following:

A. that [Griffis] is a liar;

B. that [Griffis] is a phony;

C. that [Griffis] is a con-artist or scam-artist;

E.[sic] that [Griffis] has falsified her credentials in order to gain admission to any organization, or inclusion on any list, of Egyptologists;

F. that [Griffis] is not affiliated with the University of Alabama at Birmingham or has not taught courses in Egypt or Egyptology through that affiliation;

G. that [Griffis] does not possess a Juris Doctor degree;

H. that [Griffis] is not engaging in a legitimate consulting business.

The issue before us is whether the injunction is sufficiently narrow so as not to prohibit non-defamatory speech. For instance, the Alabama court found that Luban defamed Griffis by calling her "a liar" with respect to Griffis's postings to an Egyptology newsgroup. As a result, the court enjoined Luban from saying "that [Griffis] is a liar." But because this provision is not restricted to any particular context, i.e., postings to the Egyptology newsgroup, the injunction has the effect of prohibiting Luban from calling Griffis "a liar" even if to do so in another context would *not* be defamatory. For example, the injunction prohibits Luban from calling Griffis "a liar" even if Griffis were to say that "John F. Kennedy was never President of the United States." On its face, the injunction prohibits speech even if non-defamatory and protected by the First Amendment. *See Bebo v. Delander*, 632 N.W.2d 732, 739 (Minn. App. 2001) (holding that one element of defamation is that the statement be false).

We conclude that the injunction is overbroad because it enjoins Luban from making certain statements regardless of the context. As a result, because portions of the injunction are not limited to the precise statements found by the Alabama court to be defamatory, it violates the "prior restraint" doctrine.

We reverse the vacation of the injunction and remand to the district court to narrow the scope of the injunction so that it restricts only those statements found to be defamatory and does not extend to non-defamatory speech.

**Reversed and remanded.**

**STATE OF MINNESOTA** **DISTRICT COURT**

**COUNTY OF RAMSEY** **SECOND JUDICIAL DISTRICT**

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Katherine Griffis,

Plaintiff,

v.

Marianne Luban,

Defendant.

Court File: C1-98-4573

Plaintiff's Motion for Injunctive Relief: the Issuance of an Order for a Rule to show Cause; and, For an Order Holding Defendant on Contempt of Court

---

1. Pursuant to the Full Faith and Credit Clause of the United States Constitution and the laws of the United States and State of Minnesota, in May 1998, Plaintiff caused a valid, certified judgement of the State of Alabama, including a Permanent Injunction, ordering Defendant to refrain from publishing defamatory statements regarding Plaintiff, to be filed in Ramsey County District Court, for the purposes of securing the relief granted in the judgement. Plaintiff seeks enforcement of that Injunction.

2. Said Injunction of January 14, 1998 provides that:

**1. That defendant be, and hereby is, permanently enjoined from publishing in any form including, but not limited to, the Internet, World Wide Web, and E-mail, any statement asserting or implying:**

***A. that Plaintiff is a liar;***

***B. that Plaintiff is a phony;***

***C. that Plaintiff is a con-artist or scam-artist;***

E. *that Plaintiff has falsified her credentials in order to gain admission to any organization, or inclusion on any list, of Egyptologists;*

F. *that Plaintiff is not affiliated with the University of Alabama at Birmingham or has not taught courses in Egypt or Egyptology through that affiliation;*

G. *that Plaintiff does not possess a Juris Doctor degree;*

H. *that Plaintiff is not engaging in a legitimate consulting business.*

2. **That a violation of the provisions of this injunction shall constitute a contempt of this Court by Defendant. (emphasis added)**

3. Thereafter, Defendant moved for the Alabama judgement to be set aside, alleging a lack of personal jurisdiction over Defendant. Referee Manuel Cervantes, of Ramsey County District Court, upheld the personal jurisdiction of the Alabama courts. (See, Referee Findings, Attached). The Findings of the Referee were set aside by the Minnesota Court of Appeals for procedural reasons, unrelated to the issue of personal jurisdiction. See Griffis v Luban (attached)

4. Plaintiff seeks *only* enforcement of the injunctive relief in this matter and that and Order for a Rule to Show Cause issue to require Defendant to show why she should not be held in contempt of the valid Order of the Alabama Court.

5. In an effort to escape the financial responsibility also imposed by the Alabama Courts, in addition to the Permanent Injunction, Defendant has filed for bankruptcy protection (listing the $25,000 Alabama judgement as a valid

debt dischargeable in the bankruptcy, thus impliedly acknowledging the validity of the judgement.)

6. Plaintiff has not contested the discharge of the monetary judgement through the bankruptcy proceeding, but continues to assert her absolute right to seek enforcement of the non-monetary injunctive relief granted by the Alabama Courts, pursuant to a valid judgement and final order.

7. Pursuant to the injunctive relief granted in the Alabama judgement, Defendant has been under an obligation to refrain from publishing defamatory statements concerning plaintiff, since the entry of the judgement in Alabama on January 14, 1998.

8. On numerous occasions following entry of the Alabama judgement on January 14, 1998, Defendant has violated the terms of the judgement by publishing defamatory statements attacking the veracity and professional standing of Plaintiff. (See the attached Table of 25 selected Internet postings, chosen from more than 179 Internet posts and phone calls totaling more than 454 individual violations of the Injunction, incorporated herein by reference.)

9. On numerous occasions, following the filing of the Alabama injunction in the District Court of Ramsey County in May, 1998, Defendant has continued to violate the terms of the judgement by publishing defamatory statements attacking the veracity and professional standing of Plaintiff. (See the attached Affidavit, incorporated herein.)

10. The violations of the injunction include, but are not limited to, ninety-nine (99) separate incidents in 25 separate published statements, to wit:

A. Thirty-seven (37) violations of Injunction paragraph 1A.

B. Twenty-two (22) violations of Injunction paragraph 1B.

C. Sixteen (16) violations in Injunction paragraph 1C.

D. Eight (8) violations of Injunction paragraph 1E.

E. Five (5) violations of Injunction paragraph 1F.

F. Two (2) violations of Injunction paragraph 1G.

G. Three (3) violations of Injunction paragraph 1H

10. *[sic]* Upon information and belief, in the absence of contempt of court sanctions enforcing the injunctive relief required by the Alabama judgement, Defendant has ignored, and will continue to ignore, the terms of the Injunction and Plaintiff will continue to suffer irreparable personal and professional harm that the injunctive relief sought to prevent.

WHEREFORE, plaintiff moves, this Honorable Court for: enforcement of the Permanent Injunction issued by the Courts of Alabama; an Order for a Rule to Show Cause why Defendant should not be held in contempt of court; and, for an ORDER holding Defendant in Contempt of Court and imposing sanctions, to wit:

(1) a fine of $1,000 for each violation of the terms of the injunction, from the date of service of the Alabama judgement upon Defendant up to an including the date of the Order entered by this Court, but not less than ninety-nine thousand dollars ($99,000), payable to Plaintiff, the District Court of Ramsey County, or a charity of the Plaintiff's choice;

(2) surrender of Defendant's computer and modem to the Court to prevent continuing and future violations of the injunction;

(3) payment of fees, costs and attorneys fees associated with Plaintiffs attempts to secure enforcement of the Alabama injunction by resort to the Courts of Minnesota, arising from Defendant's continuing violations of the Permanent Injunction;

(4) compliance with such other relief as this Court deems just and proper to secure compliance with the injunctive relief ordered by the Courts of Alabama; and,

(5) in the event that the Defendant fails to comply with any of the above by a date certain, as ordered by this Honorable Court, Defendant shall be incarcerated in the Ramsey County Detention Center until such time as Defendant complies with the terms of the January 14, 1998 Permanent Injunction and other Orders of this Court.

Respectfully submitted:


_____ Dated
Peter Erlinger, III. No. 3124291
566 Marshall Ave.
St. Paul, M 55120
(651) 290-6384

_____ Dated:
Ralph Overholt, #212404
P.O. Box 5331
Hopkins, MN 55343
(612) 930-3204

**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF MINNESOTA**

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| | | |
|---|---|---|
| In re | MARIANNE LUBAN,<br>a/k/a MARIANNE WELLS, | BKY 99-36147 |
| | Debtor. | Chapter 7 |
| MARIANNE LUBAN, | | ADV 00-3163 |
| | Plaintiff, | |
| v. | | **ORDER** |
| KATHERINE GRIFFIS,<br>C. PETER ERLINDER, and<br>RALPH J. OVERHOLT, | | |
| | Defendants. | |

---

At St. Paul, Minnesota.

This matter came before the Court on the parties' cross motions for summary judgment. Ralph J. Overholt appeared *pro se* and on behalf of the defendant, Katherine Griffis.[1] Marianne Luban appeared, *pro se*.

The Court has jurisdiction over this matter as a core proceeding under 28 U.S.C. §§ 157(b)(2)(O), and § 1334. Based upon the proceedings and all the relevant files and records contained herein, and for the reasons set forth below,

---

[1] The "Defendant's" brief submitted regarding these cross motions for summary judgment apparently represents the arguments of and is relied up by all three defendants.

the Court now makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

## I. BACKGROUND

In early 1998, the defendant Katherine Griffis, obtained a default judgment and injunction in Jefferson County Circuit Court in Alabama against the plaintiff, Marianne Luban. The default judgment was in the amount of $25,000.00, for damages arising from allegedly defamatory statements against Griffis posted on the Internet by Luban. The injunction was a prohibition against any further posting of such remarks. Luban challenged the Alabama judgment and injunction in Minnesota state courts,[1] and apparently litigation challenging the constitutionality and jurisdiction is still underway.

On December 16, 1999, Luban filed a bankruptcy petition under Chapter 7. In her schedules, Luban listed Griffis as a creditor in the amount of $25,000.00. Griffis brought a motion for relief from stay in order to enforce the Alabama injunction in Minnesota state court proceedings she intended to initiate. This Court denied the motion for relief on February 9, 2000. Luban received a discharge in her Chapter 7 case on March 15, 2000, including the debt to Griffis, the

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[1] Initially, the district court by referee vacated the judgment and injunction on August 31, 1998. On March 18, 1999, however, the order was amended and the Alabama judgment was affirmed. Thereafter the Minnesota Court of Appeals vacated the docketing of the Alabama judgment as part of a determination to vacate all referees' orders that had not been co-signed by a district court judge. The Alabama judgment was subsequently re-docketed on February 23, 2000, during which time the automatic stay applied in Luban's bankruptcy case. The re-docketing by the Ramsey County District Court was part of the process of re-issuing valid, co-signed referee judgments and not at the request or under the control of any of the defendants. Accordingly, there was no § 362 stay violation by the defendants and no further discussion of that question is required.

dischargeability of which was never contested in an adversary proceeding or otherwise.

On April 17, 2000, Griffis initiated litigation in Ramsey County District Court purportedly to enforce the Alabama injunction, but also seeking $99,000.00 in damages and a permanent injunction against Luban from all use of the Internet and or incarceration of Luban for alleged violations of the injunction between May, 1998, and October, 1999. This motion is the central subject of this adversary proceeding in bankruptcy.

The motion filed by Griffis and her attorneys, provides in relevant part:

> Motion for Injunctive Relief: The Issuance of an Order for a Rule to Show Cause; and, For an Order Holding Defendant in Contempt of Court
>
> 1. Pursuant to the Full Faith and Credit Clause ... a valid, certified judgment of the State of Alabama, including a Permanent Injunction, ordering Defendant [Luban] to refrain from publishing defamatory statements regarding Plaintiff [Griffis] ... filed in Ramsey County District Court, for the purposes of securing the relief granted in the judgement. Plaintiff seeks enforcement of that Injunction.
>
> 2. Said Injunction ... provides that:
>
>    1. The defendant be ... permanently enjoined from publishing in any form including, but not limited to, the Internet, World Wide Web, and E-mail, any statement asserting or implying:
>
>       A. That Plaintiff is a liar:
>       B. that Plaintiff is a phony;

C. that Plaintiff is a con-artist or scam-artist;
E. that Plaintiff has falsified her credentials ...
F. that Plaintiff is not affiliated with the University of Alabama ...
G. that Plaintiff does not possess a Juris Doctor degree;
H. that Plaintiff is not engaging in a legitimate consulting business.

2. That a violation of the provisions of this injunction shall constitute a contempt of this Court by Defendant.

4. Plaintiff seeks *only* enforcement of the injunctive relief in this matter and that and [sic] Order for a Rule to Show Cause issue to require Defendant to show why she should not be held in contempt of the valid Order of the Alabama Court.

5. In an effort to escape the financial responsibility also imposed by the Alabama Courts, in addition to the Permanent Injunction, Defendant has filed for bankruptcy protection (listing the $25,000 Alabama judgement as a valid debt dischargeable in the bankruptcy, thus impliedly acknowledging the validity of the judgement.)

6. Plaintiff has not contested the discharge of the monetary judgement through the bankruptcy proceeding, but continues to assert her absolute right to seek enforcement of the non-monetary injunctive relief granted by the Alabama Courts, pursuant to a valid Judgement and final order.

7. Pursuant to the injunctive relief granted in the Alabama Judgement, Defendant has been under an obligation to refrain from publishing defamatory statements concerning Plaintiff...

8. On numerous occasions following entry of the Alabama judgement on January 14, 1998, Defendant has violated the terms of the judgement by publishing defamatory statements attacking the veracity and professional standing of Plaintiff. (See the attached Table of 25 selected Internet postings, chosen from more than 179 Internet posts and phone calls totaling more than 454 individual violations of the Injunction ...)

9. On numerous occasions, following the filing of the Alabama injunction in the District Court of Ramsey County in May, 1998, Defendant has continued to violate the terms of the judgement ...

10. The violations of the injunction include, but are not limited to, ninety-nine (99) separate incidents in 25 separate published statements, to wit: ...

10. [sic] Upon information and belief, in the absence of contempt of court sanctions enforcing the injunctive relief required by the Alabama judgement, Defendant has ignored, and will continue to ignore, the terms of the Injunction and Plaintiff will continue to suffer ...

WHEREFORE, plaintiff moves ... for: enforcement of the Permanent Injunction issued by the Courts of Alabama; and Order for a Rule to Show Cause why Defendant should not be held in

contempt of court; and, for an ORDER holding Defendant in Contempt of Court and imposing sanctions, to wit:

(1) a fine of $1,000 for each violation of the terms of the injunction, from the date of service of the Alabama judgement upon Defendant up to an [sic] including the date of the Order entered by this Court, but not less than ninety-nine thousand dollars ($99,000), payable to Plaintiff, the District Court of Ramsey County, or a charity of the Plaintiff's choice;

(2) surrender of Defendant's computer and modem ...;

(3) payment of fees, costs and attorney fees associated with Plaintiffs attempts to secure enforcement of the Alabama injunction by resort to the Courts of Minnesota, arising from Defendant's continuing violations...;

(4) compliance with such other relief as this Court deems just and proper ... and;

(5) in the event that the Defendant fails to comply with any of the above by a date certain, as ordered by this Honorable Court, Defendant shall be incarcerated in the Ramsey County Detention Center until such time as Defendant complies with the terms of the January 14, 1998 Permanent Injunction and other Orders of this Court.

On May 15, 2000, the Ramsey County court held a hearing on the motion to enforce the injunction and seeking a finding of contempt, and on Luban's numerous cross motions including to vacate, to compel discovery, for an order to show cause, and for sanctions. On July 26, 2000, the

state court apparently held another hearing on these matters and from the bench granted the motion to enforce the injunction on the basis that the Alabama injunction should be given full faith and credit in Minnesota. In a written order dated December 13, 2000, the court reiterated the same. No violations of the injunction were found, however, and no damages therefrom were awarded.

On August 29, 2000, Luban filed this adversary proceeding. After amending her complaint and following several hearings, Luban narrowed down her complaint to allege that the motion made by Griffis and her attorneys to the Ramsey County District Court on April 17, 2000, was an attempt to collect a discharged debt in violation of 11 U.S.C. § 524(a). Luban contends that each of the ninety-nine purported violations of the Alabama injunction alleged in the motion to hold Luban in contempt of court were pre-petition incidents, and that therefore the defendants' conduct in seeking damages for those pre-petition acts constitutes a violation of the discharge injunction under 11 U.S.C. § 524(a)(2). The Court agrees.

## II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the record, viewed in a light most favorable to the non-moving party, shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Rabushka v. Crane Co., 122 F .3d 559, 562 (8th Cir. 1997); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Fed.R.Civ.P. 56(c).

In deciding whether a defendant is entitled to summary judgment, the Court views the record in a light most favorable to the plaintiff, the nonmoving party, affording the plaintiff the benefit of all reasonable inferences. See Tlamka v. Serrell, 2001 WL 285149, *2 (8th Cir.); Lambert v. City of Dumas, 187 F.3d 931, 934-35 (8th Cir. 1999).

In this case, the parties agree that the central facts are not disputed. The sole issue is whether the motion brought post-petition and post-discharge by the defendants in Ramsey County constituted an attempt to collect a discharged debt. The document filed in the state court speaks for itself, and this Court finds its patent intention is also otherwise well-supported by the record.

## III. DISCUSSION

**Violation of § 524(a)(2)**

"[A] discharged debtor is entitled to a 'fresh start,' ... [and] a creditor's treatment of a discharged debtor must conform to the provisions of the bankruptcy law." See Olson v. McFarland Clinic. P.C. (In re Olson), 38 B.R. 515, 518 (Bankr. N.D. Iowa 1984). "A discharged debtor enjoys the benefit of 11 U.S.C. § 524." Id. Section 524(a)(2) provides:

> (a) A discharge in a case under this title –
>
> (1) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived ...

See 11 U.S.C. § 524(a)(2).

"Section 524(a)(2) was enacted to continue post-discharge the temporary stay imposed by § 362 when a case is commenced. It replaces the automatic stay with a permanent injunction against enforcement of all discharged debts upon entry of the discharge." See Waswick v. Stutsman County Bank, 212 B.R. 350, 352 (Bankr. D. N. D. 1997) (citation omitted).

"Willful violation of the injunction imposed by § 524(a)(2) will warrant a finding of civil contempt." Id. "[T]o

find one in civil contempt of the § 524(a)(2) injunction, the burden rests with the movant to show by clear and convincing evidence that the offending creditor or entity had knowledge of the discharge and willfully violated it by continuing with the activity complained of [sic]." Id. (citations omitted). The requisite knowledge must be actual. Id. at 353 (citation omitted).

A review of the motion filed by the defendants against Luban in Ramsey County District Court on April 17, 2000, a little more than a month following Luban's discharge in bankruptcy, demonstrates that the plain intention of the defendants was to both enforce the Alabama injunction and to either extract money damages from Luban for violations of the injunction or persuade the state court to incarcerate her for her purported contempt of the court. The motion's caption expressly states the relief sought to include "an Order Holding Defendant [Luban] in Contempt of Court."

Paragraph 4 of the motion is an apt illustration of the defendants' attempt to characterize the motion as only pertaining to future conduct yet simultaneously asking for damages. The provision emphasizes that Griffis "seeks *only* enforcement" of the injunction yet the same sentence immediately thereafter requests an order to show cause why Luban should not be held in contempt for violating the injunction.

The defendants have offered in explanation only that there was no intention to violate the discharge injunction; that wasn't what the motion was meant to do – it was merely to enforce the state court injunction, and the listed alleged violations were to demonstrate that the injunction had been violated since the time of its issuance. The requested damages and the contempt order sought were, the defendants opine, only intended on a going forward basis, to be applied to future violations. Nevertheless, this

interpretation is at odds with a plain interpretation of the unambiguous language of the offending motion. Even the defendants concede that "maybe" the way that the motion was drafted resulted in a violation of the discharge injunction.

In spite of the repeated assurances throughout the motion that the proceeding was brought only to secure the injunctive relief awarded, such as referring to losing the $25,000 judgment by virtue of Luban's bankruptcy but maintaining the "absolute right to seek enforcement of the non-monetary injunctive relief granted by the Alabama Courts," (paragraph 6), the motion nevertheless returns to its paramount theme of the necessity of contempt sanctions to secure Luban's compliance with the injunction. For example, the second paragraph 10 contends that the only way Luban will be compelled to observe the injunction is in the event of court ordered consequences against her: "in the absence of contempt of court sanctions enforcing the injunctive relief required by the Alabama judgement, Defendant [Luban] has ignored, and will continue to ignore, the terms of the Injunction."

Moreover, the record before this Court is replete with evidence of careful planning by the defendants. Notice of Luban's discharge, its import, and the processes of bankruptcy and all its implications, are nonissues in this case. There was extensive communication between Griffis and her lawyers throughout the course of Luban's bankruptcy proceedings. It is well documented that much thought was given in determining precisely what route to take to secure an effective injunction against Luban and to obtain some form of retribution.

Were any of the alleged violations noted in the motion post-petition incidents, the defendants might have some margin of credibility. However, of the ninety-nine

purported violations of the Alabama injunction, listed in detail as part of the motion, not a single one is a post-petition occurrence. Every violation complained of in the April 17, 2000, motion is pre-petition conduct, and as such any debt therefor to Griffis was discharged in Luban's bankruptcy on March 15, 2000. Griffis had an opportunity, as this Court expressly stated at the hearing on her motion for relief from stay, to challenge the dischargeability of the judgment and related debts in an adversary proceeding before this Court. Griffis and her attorneys deliberately decided to wait until the discharge was entered and pursue Luban thereafter in state court in an attempt to resurrect her liability for discharged debt under cover of contempt proceedings.

The defendants argue that proceedings for contempt of court are not precluded by bankruptcy discharge because such fines, no matter who payable to, are for the purpose of upholding the integrity of the court. See Thruway Messenger Service, Inc. v. Marini (In re Marini ), 28 B.R. 262 (Bankr. E.D.N.Y. 1983). However, "[A]ny civil court action that is intended to further the collection of a pre-petition debt, or whose legal or practical result will be to accomplish such collection, is enjoined." See Atkins v. Martinez (In re Atkins ), 176 B.R. 998, 1006-07 (Bankr. D. Minn. 1994). "This is so regardless of how the action is styled in terms of substance, and regardless of its posture as to procedure; regardless of the nominal alignment of the initiating and responding parties; and regardless of the specificity or vagueness of the relief requested in the pleadings or papers that commence the proceeding." Id. "Those proceedings in which a private-party complainant seeks or is motivated to collect a pre-petition debt via the contempt adjudication ... unquestionably fall within the scope of the [discharge] injunction." Id.

As in Atkins, there is nothing about the proceedings that occurred before the Ramsey County District Court as a result

of the motion of April 17, 2000, that implicated the authority or integrity of that court. "Under this framework, then, the Defendants cannot have the benefit of a judicially-crafted exception from the ... discharge injunction." Id.

The totality of undisputed facts in this case renders the defendants' protestations unavailing. Luban's alleged debts to Griffis, arising out of the Alabama judgment and injunction and asserted pre-petition violations thereto, were discharged in bankruptcy on March 15, 2000. The defendants had notice of Luban's discharge and were thereafter bound by the discharge injunction of § 524(a)(2). The defendants were and are "restrained and enjoined from taking any action to assert any [pre-petition] claim against Plaintiff." See Bowen v. Residential Fin. Corp. (In re Bowen), 89 B.R. 800, 807 (Bankr. Minn. 1988).

The defendants having had notice of the discharge, the discharge injunction, and its effect. and because the defendants intentionally proceeded to seek enforcement of a debt subject to the Chapter 7 discharge, "it perforce follows that [the defendants] knowingly and willfully proceeded to violate that [discharge] injunction when it commenced its litigation" in state court for an order of contempt against Luban based on pre-petition alleged violations of the Alabama injunction. Id. As a result, the defendants are in contempt of this Court. Id.

Luban is entitled to judgment in her favor, determining that her Chapter 7 discharge discharged the Griffis's claims of pre-petition violations of the Alabama injunction, and finding the defendants in civil contempt of this Court for attempting to enforce those claims by instituting contempt proceedings in Ramsey County District Court. Id.

**Damages for Violating § 524(a)(2)**

"A bankruptcy court may award damages to the injured party for a willful violation of the discharge injunction pursuant to the court's civil contempt power imbedded in section 105 of the Code." See Payless Cashways, Inc. v. Tippecanoe County (in re Payless Cashways, Inc.), 254 B.R. 746, 751 (Bankr. W.D. Mo. 2000) (citation omitted); see also Bowen, 89 B.R. at 807 n.10 (proceeding in bankruptcy seeking monetary relief to compensate disobedience of the discharge injunction and equitable relief to restrain future infractions is a proceeding for an adjudication of civil contempt, which power is conferred on bankruptcy judges by the all-writs provisions of § 105). "The use of that power is discretionary ... [a]nd, the damages must be based on evidence of actual loss." See Payless Cashways, 254 B.R. at 751.

"[Section] 524(a) is civil contempt and may be redressed by extraction of attorneys fees." See In re Smith, No. 92-36336, slip op. (Bankr. D. Minn. July 23, 1993) (unpublished decision). However, each violation must be considered in its entirety, with due consideration to the underlying facts." Id. (citations omitted). "Violation of the injunction also can result in a claim for general compensatory damages to a debtor injured by the violation." Id. Lastly, violation of the discharge injunction can also give rise to punitive damages, to the extent that the creditor action and behavior reaches the necessary level of outrageousness. Id.

The question of Luban's damages as a result of the defendants' contempt is inherently factual. Moreover, the record before the Court on this issue is undeveloped and therefore inadequate for present determination. "The structure of an appropriate sanction for the [Defendants'] contempt, in the form of damages compensating Plaintiff for the infringement of [her] established rights under the

[discharge] order, may be addressed in further proceedings." See Bowen, 89 B.R. at 807. A trial exclusively on the subject of damages will be scheduled. The trial briefs due pursuant to deadlines to be established by a new trial order shall address only the issue of damages, and, as the Court has previously reiterated, discovery is and remains closed and no requests for reopening discovery will be entertained.

## IV. DISPOSITION

For the reasons set forth above, IT IS HEREBY ORDERED:

1. The Plaintiff's motion for summary judgment against the defendants is **GRANTED** as to liability under § 524(a)(2);

1. The Defendants' motion for summary judgment is **DENIED;**

1. This matter will proceed to trial exclusively on the issue of the Plaintiff's damages as a result of the Defendants' violation of § 524(a)(2).

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: May 9, 2001

/e/ Dennis D. O'Brien
Hon. Dennis D. O'Brien
United States Bankruptcy Judge

ELECTRONIC NOTICE OF ENTRY AND
FILING ORDER OR JUDGMENT Filed and
Docket Entry made on May 9, 2001
Patrick
G. DeWane, Clerk By DLR Deputy Clerk

**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF MINNESOTA**

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In re MARIANNE LUBAN, a/k/a MARIANNE WELLS,

Debtor.

BKY 99-36147

Chapter 7

---

MARIANNE LUBAN,

Plaintiff

v.

KATHERINE GRIFFIS, C. PETER ERLINDER, and RALPH J. OVERHOLT,

Defendants.

ADV 00-3163

**ORDER**

---

At St. Paul, Minnesota this 17th day of July, 2001.

On May 9, 2001, this Court entered and Order for Judgment and Judgment in favor of the Plaintiff finding that the Defendants violated the discharge injunction provided by 11 U.S.C. § 524(a)(2) and setting the matter on for trial exclusively to determine the Plaintiffs damages as a result of the § 524(a)(2) violation. This matter came before the Court today to be tried accordingly, and on the Defendants' motion to enforce a purported settlement. Ralph J. Overholt appeared *pro se* and on behalf of the Defendants, Katherine

Griffis and C. Peter Erlinder. Steven D. London appeared on behalf of the Plaintiff, Marianne Luban.

The Court has jurisdiction over this matter as a core proceeding under 28 U.S.C. §§ 157(b)(2)(O), and § 1334. Based upon the proceedings and all the relevant files and records contained herein, the evidence admitted at trial, and for the reasons stated by the Court on the record, the Court now makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED:

1. The Defendants' motion to enforce settlement is granted in part, to the extent of the $900.00 damage award contemplated by the settlement and the waiver by the Defendants of the $500 fees and costs awarded to the Defendants against the Plaintiff by the Ramsey County District Court of the State of Minnesota;

2. In addition to the settlement provisions enforced in paragraph 1 of this Order, the judgment against the Defendants will also include:

   A) amounts equal to the filing fees paid by the Plaintiff in this adversary proceeding and in defending the state court motion of April 17, 2000, made by the Defendants in violation of § 524(a)(2),

   B) the Plaintiffs reasonable attorney's fees incurred in the trial of this adversary proceeding, and

   C) a permanent injunction forever prohibiting the Defendants individually or in concert from seeking any redress or remedy whatsoever from the Plaintiff on the basis of prepetition conduct that did or would otherwise violate the Jefferson

County Circuit Court of Alabama injunction entered against the Plaintiff in 1998;

3. The Court will not award punitive damages;
4. Plaintiff's counsel has 10 days from the date of this Order to file an affidavit of reasonable attorney's fees; and
5. A final judgment will thereafter be entered against the Defendants in this case consistent with the terms of this Order.

BY THE COURT:

Dated: July 18, 2001

/e/ Dennis D. O'Brien
United States Bankruptcy
Judge

STATE OF MINNESOTA

IN SUPREME COURT

CX-01-1350

Katherine Griffis,

Respondent,

vs.

Marianne Luban,

Petitioner.

ORDER

This appeal concerns respondent's efforts to enforce in Minnesota courts an injunction obtained against petitioner, a Minnesota resident, by default judgment in an Alabama state court. The court of appeals ordered the case remanded to the district court to issue a modified injunction narrowed to reach only statements found to be defamatory by the Alabama court and to ensure that the injunction did not extend to nondefamatory speech. By order dated May 14, 2002, the petition for further review in this case was granted and all proceedings were stayed pending final disposition in a prior appeal involving the enforceability of the Alabama judgment, *Griffis v. Luban*, 633 N.W.2d 548 (Minn. App.) (*Griffis I*), *rev. granted* (Minn. Nov. 13, 2001).

Our opinion in *Griffis I* was filed July 11, 2002, holding that the Alabama judgment is not entitled to full faith and credit in Minnesota courts because due process principles preclude recognizing Alabama's exercise of personal jurisdiction over petitioner in the circumstances of this case. *Griffis v. Luban*, 646 N.W.2d 527 (Minn. 2002). We therefore vacated the Alabama judgment filed in Ramsey County

District Court on May 5, 1998, under the Uniform Enforcement of Foreign Judgments Act, Minn. Stat. § 548.27 (2000), and the Ramsey County District Court judgment entered on December 21, 2000, based on the Alabama judgment. Having vacated those judgments, there is no legal basis on which the injunction that is the subject of this appeal and the court of appeals' remand could be issued. Accordingly the decision of the court of appeals is vacated and the case remanded to the district court for final disposition of the case consistent with *Griffis I.*

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the May 14, 2002, order of this court staying proceedings be, and the same is, vacated.

IT IS FURTHER ORDERED that the March 5, 2002, decision of the court of appeals be, and the same is, vacated and the matter is remanded to the district court for any proceedings necessary to conclude the case consistent with *Griffis v. Luban*, 646 N.W.2d 527 (Minn. 2002).

Dated: September 17, 2002

BY THE COURT:

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Kathleen A. Blatz
Chief Justice

Gilbert, J., took no part in the consideration or decision of this case.